

After Recording Return to:

Port of Seattle

Attn: _____

P.O. Box 1209

Seattle, WA 98111

Grantor: Port of Seattle, a Washington municipal corporation

Grantee: City of Seattle, a Washington municipal corporation

Abbreviated Legal Description:

Assessor's Parcel No.:

DUWAMISH WATERWAY HABITAT MITIGATION EASEMENT

This easement for a habitat mitigation project is conveyed by the Port of Seattle, a Washington municipal corporation ("Port"), to the City of Seattle, a Washington municipal corporation ("City"), as described below.

RECITALS

- A. The Port owns certain real property in King County, Washington, legally described in Exhibit "A-1" and depicted approximately as the darkened area in Exhibit "A-2," which Exhibits are attached to and incorporated in this document by this reference ("Easement Property").
- B. The City of Seattle owns certain real property in King County, Washington, legally described in Exhibit "B-1" and depicted in Exhibit "B-2," which Exhibits are attached to and incorporated in this document by this reference ("City Property").
- C. The City desires to make certain changes to a portion of the Port Property depicted on Exhibit A ("Easement Property") in order to enhance fish habitat in the Duwamish Waterway and Turning Basin No. 3 ("City Project") in connection with environmental restoration and enhancement on the City Property and in accordance with the terms of a settlement agreement between the City and the U.S. Army Corps of Engineers ("Corps").

AGREEMENT

For and in consideration of valuable consideration, receipt of which is hereby acknowledged, the Port conveys the following public access easement subject to the conditions set forth below:

1. Easement. The Port hereby conveys and quitclaims to the City, a perpetual, non-exclusive easement in, upon and across the Easement Property, to access, construct, operate, maintain, repair, replace and monitor shoreline fish and wildlife habitat features and plantings, including but not limited to the placement of and removal of materials or structures in the bed or banks, as necessary to effectuate the City Project and City's settlement agreement with the Corps, using contractors, agents and representatives of the City's choice.

2. Effective Date. This Easement is effective upon the signature of both parties, after authorization by the Port Commission and the Seattle City Council have become effective.

3. Fee. The City will pay the Port fifty thousand dollars (\$50,000) within 20 days of the effective date of this Easement.

4. Limited Conveyance. The Port does not intend through this Easement to make a gift or a dedication for any general public use other than the uses stated in this Easement on the Easement Property.

5. Maintenance. The City is responsible for the maintenance of any items or improvements installed or created as part of the City Project. The City will reimburse the Port for its costs for maintaining any part of the City Project if any local, state, or federal agency imposes this obligation on the Port.

6. Termination. The Port may terminate this Easement, subject to the following conditions:

- a. The Port has entered into a final agreement to enhance fish habitat in an area that includes the Easement Property and the Port's enhancement project will provide more biological benefit than the City Project, and
- b. The Port has delivered written notice to the City's Director of Fleet and Facilities Department, 700 5th Avenue, Suite 5200, PO Box 94689, Seattle, WA 98124-4689, not less than six months prior to the intended termination date, and
- c. The Port has no obligation to provide the City another location to replace the Easement Property, and
- d. The City will pay the Port the lesser of either \$50,000 or the monetary value of the reduced credit the Port would have received for its own habitat enhancement project as part of an accounting against natural resource damage liability by the Natural Resource Trustees, had the City Project not been installed. This payment obligation expires five years from the effective date of this Easement.

7. Use of Easement Property. The City shall use the Easement Property to access, construct, operate, maintain, repair, replace and monitor shoreline fish and wildlife habitat features and plantings as necessary to effectuate the City Project and City's settlement agreement with the Corps and shall not use it for any other purpose without first obtaining the written consent of the Seaport Managing Director of the Port. Elements of the design for the Easement Property include removal of some existing riprap along the shoreline, installing large woody debris and gravel, removing invasive and non-native plants, installing native vegetation, and related habitat work.

8. Acceptance of Easement Property. The City has examined the Easement Property and accepts it in its present condition. The Port and the City make no warranties or representations regarding the following issues with respect to the Port Property or Turning Basin No. 3:

- a. The condition of title;
- b. the suitability of the area for the uses proposed under this Easement;
- c. the rights or uses to the areas that may be asserted by third parties.

In the event that a court determines that the Port did not have the authority to grant an easement in the Easement Property, this instrument shall be construed as a contract and enforceable as such.

9. Claims. The City will be responsible for the costs to repair and remediate damages arising from its activities under this Easement. The City will also pay all costs for claims of any sort arising from its activities described in this Easement. The City will indemnify and hold the Port harmless from all such claims except to the extent they are attributable to the Port's negligence.

10. Assignment or Sublease. The City shall not assign or transfer this Easement in whole or in part nor sublet any part of the Easement Property, nor shall this Easement be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the written consent of the Port first had and obtained.

11. Entire Agreement. This Agreement contains the entire agreement between the Port and the City and supersedes any previous agreements or negotiations. Modification or waiver of any provision in this Agreement shall be effective only if made in writing and executed with the same formality as this easement.

EXECUTED this _____ day of _____, 2007.

CITY OF SEATTLE

PORT OF SEATTLE

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of ____, 200__ before me personally appeared _____, to me known to be the _____ of the CITY OF SEATTLE, a municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the state of Washington,
residing at _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 200__, before me personally appeared _____, to me known to be the _____ of the PORT OF SEATTLE, a port district and municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for

the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

Notary Public in and for the state of Washington,
residing at _____
My appointment expires: _____

Exhibit A-1

Description of Lower Riprap Area at Duwamish Project Site

That portion of the Port of Seattle Commercial Water Way and the Duwamish River, lying easterly of a portion of the easterly line of Lot B, Boundary Line Adjustment Seattle City Light, Volume 180, pages 211 and 212, Recording #20041221900011, together with that portion of vacated G. Fraeger Road as vacated by King County Ordinance number 5628, recorded under recording number 8110120538, adjoining Tract 54, Moore's Five Acre Tracts, according to the plat thereof, recorded in Volume 9 of Plats, Page 28, records of King County, Washington; more particularly described as follows;

Beginning at the northeast corner of said Lot B;

Thence South 13°52'14" East, along said easterly line, 871.16 feet to the TRUE POINT OF BEGINNING;

Thence continuing South 13°52'14" East, along said easterly line, 398.00 feet;

Thence South 22°56'21" West, 46.79 feet;

Thence South 10°51'21" West, 44.00 feet;.

Thence Northerly along a line 5 feet waterward of the bottom of the riprap structure, as built to the intersection with the easterly extension of a line running 365.00 feet northerly of and parallel with the north line of Tract 54;

Thence Westerly to the true point of beginning.

Exhibit A-2

NOTES

- ① Anchor large woody debris (LWD) this area, approx 6-8 pieces of LWD proposed to be placed and anchored. Anchoring will need to be dug in.
- ② Along this portion of the shoreline approx 8-10 pieces of LWD proposed to be placed and anchored. Anchoring will need to be dug in.
- ③ A habitat gravel mix is proposed to be added to existing riprap in this location.
- ④ Pocket plantings between existing riprap are proposed, primarily comprised of willow.

SEATTLE CITY LIGHT
SUBSTATION

WEST MARGINAL PLACE SOUTH

DUWAMISH RIVER

DUWAMISH RIVER

4,913.1 SQ. FT.



0 125 250

SCALE IN FEET

AMEC Earth & Environmental

11335 N.E. 122nd Way, Suite 100
Kirkland, WA, U.S.A. 98034-6918



CLIENT LOGO

CLIENT

**CITY OF SEATTLE
FLEETS AND FACILITIES DEPARTMENT**

PROJECT **WETLAND MITIGATION PLAN, SEATTLE JOINT TRAINING FACILITY**

DWN BY:

JRS

DATUM:

DATE:

DECEMBER 2006

TITLE

**DUWAMISH SITE
LOWER RIPRAP AREA WITH
ACTIVITIES PROPOSED (APPROXIMATE)**

CHK'D BY:

KD

REV. NO.:

PROJECT NO:

591M-153760

PROJECTION:

SCALE:

AS SHOWN

FIGURE No.

5A

Exhibit B-1

Project Area Description

An agreement for Property Use and Maintenance over portions of the following described parcels:

Parcel 1 (PM#230404-2-302G&H)

Tract 54, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington, lying northeasterly of West Marginal Way (Primary State Highway No. 1);
EXCEPT that portion deeded to the State of Washington under Auditor's File No. 5224977 and pursuant to the City of Seattle Ordinance No. 89535.

Parcel 2 (PM#230404-2-302I)

That portion of Tract 55, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington, lying northeasterly of West Marginal Way (Primary State Highway No. 1) described as follows:

Beginning at the point of intersection of the northerly line of Tract 55 with the easterly margin of West Marginal Way;
thence South 88°51'29" East, along said northerly line, 188.89 feet;
thence South 24°09'42" East, 129.91 feet;
thence South 01°41'29" East, 6.10 feet;
thence South 15°06'29" East, 246.80 feet;
thence North 88°16'15" West, 6.00 feet to the easterly margin of West Marginal Way;
thence northwesterly along said easterly margin 478.57 feet to the point of beginning;
EXCEPT that portion deeded to the State of Washington under Auditor's File No. 5224977 and pursuant to the City of Seattle Ordinance No. 89535.

Parcel 3 (PM#230404-2-302K)

That portion of vacated G. Fraeger Road, County Road No. 76 pursuant to King County Ordinance No. 5628 recorded under King County Recording No. 8110120538, lying adjacent to Tract 53 and Tract 54, Moore's Five Acre Tracts, as recorded in Volume 9 of Plats, page 28, records of King County, Washington

Parcel 4 (PM#230404-2-302)

The south 365.00 feet of Parcel B, King County Lot Boundary Line Adjustment No. L04L0089 recorded under King County Recording No. 20041221900011, lying easterly of the existing fence as shown on the attached Plan.

All situate in the northwest quarter of Section 4, Township 23 North, Range 4 East, W.M., in King County, Washington.

Said agreement area being more particularly described as follows;

Commencing at the southwesterly corner of above described Parcel 4, said corner also being on the northeasterly margin of West Marginal Place South, thence S 42°58'11" E along said northeasterly margin, 177.87 feet to the POINT OF BEGINNING;
thence continuing S 42°58'11" E, 446.89 feet;
thence along said margin N 47°01'49" E, 18.50 feet;
thence along said margin S 42°58'11" E, 123.85 feet;
thence leaving said margin N 15°06'37" W, 108.77 feet along the easterly boundary of above described Parcel 2;
thence N 1°41'37" W, 6.10 feet along the easterly boundary of above described Parcel 2;
thence N 24°09'50" W, 129.19 feet along the easterly boundary of above described Parcel 2;
thence S 88°33'50" E, 91.57 feet along the southerly boundary of above described Parcel 1;
thence N 7°18'21" E, 73.00 feet along the easterly boundary of above described Parcel 3;
thence N 10°51'21" E, 184.73 feet along the easterly boundary of above described Parcel 3;
thence N 22°56'21" E, 27.43 feet along the easterly boundary of above described Parcel 3;
thence N 22°56'21" E, 19.36 feet along the easterly boundary of above described Parcel 4;
thence N 13°52'24" W, 374.91 feet along the easterly boundary of above described Parcel 4 to the north boundary of above described Parcel 4;
thence along the north boundary of above described Parcel 4 N 88°33'50" W, 30.84 feet;
thence leaving the north boundary of above described Parcel 4 S 13°41'19" E, 384.03 feet;
thence S 76°05'35" W, 458.60 feet; and the POINT OF BEGINNING.

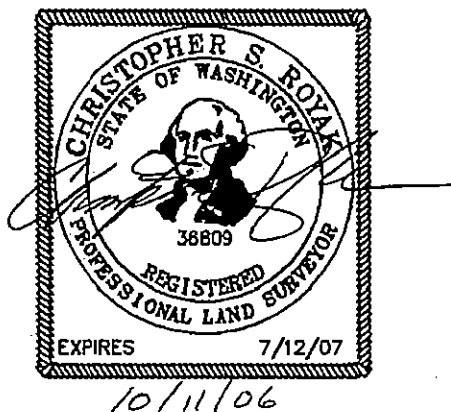


Exhibit B-2

